

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RISHAD J.,

Plaintiff,

V.

FRANK BISIGNANO,

Defendant.

Case No. 2:24-cv-01632-NJK

Order

10 This case involves judicial review of administrative action by the Commissioner of Social
11 Security (“Commissioner”) denying Plaintiff’s application for disability and disability insurance
12 benefits pursuant to Title II of the Social Security Act. Currently before the Court is Plaintiff’s
13 motion to reverse and remand. Docket No. 14. The Commissioner filed a responsive brief.¹
14 Docket No. 17. Plaintiff did not file a reply. *See* Docket. The parties consent to resolution of this
15 matter by the undersigned magistrate judge. Docket No. 4; *see also* Gen. Order. 2023-12.

I. STANDARDS

A. Judicial Standard of Review

18 The Court's review of administrative decisions in social security disability benefits cases
19 is governed by 42 U.S.C. § 405(g). *Akopyan v. Barnhart*, 296 F.3d 852, 854 (9th Cir. 2002).
20 Section 405(g) provides that, “[a]ny individual, after any final decision of the Commissioner of
21 Social Security made after a hearing to which he was a party, irrespective of the amount in
22 controversy, may obtain a review of such decision by a civil action...brought in the district court
23 of the United States for the judicial district in which the plaintiff resides.” The Court may enter,
24 “upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing

¹ The Commissioner used the wrong Plaintiff's name. *See* Docket No. 17 at 1. Further, the Commissioner submitted a barebones briefing that is lacking in analysis and citations. The Court expects better.

1 the decision of the Commissioner of Social Security, with or without remanding the cause for a
 2 rehearing.” *Id.*

3 The Commissioner’s findings of fact are deemed conclusive if supported by substantial
 4 evidence. *Id.* To that end, the Court must uphold the Commissioner’s decision denying benefits
 5 if the Commissioner applied the proper legal standard and there is substantial evidence in the
 6 record as a whole to support the decision. *Webb v. Barnhart*, 433 F.3d 683, 686 (9th Cir. 2005).
 7 Substantial evidence is “more than a mere scintilla,” which equates to “such relevant evidence as
 8 a reasonable mind might accept as adequate to support a conclusion.” *Biestek v. Berryhill*, 587
 9 U.S. 97, 139 (2019). “[T]he threshold for such evidentiary sufficiency is not high.” *Id.* In
 10 determining whether the Commissioner’s findings are supported by substantial evidence, the Court
 11 reviews the administrative record as a whole, weighing both the evidence that supports and the
 12 evidence that detracts from the Commissioner’s conclusion. *Reddick v. Chater*, 157 F.3d 715, 720
 13 (9th Cir. 1998).

14 Under the substantial evidence test, the Commissioner’s findings must be upheld if
 15 supported by inferences reasonably drawn from the record. *Batson v. Comm’r, Soc. Sec. Admin.*,
 16 359 F.3d 1190, 1193 (9th Cir. 2004). When the evidence will support more than one rational
 17 interpretation, the Court must defer to the Commissioner’s interpretation. *Burch v. Barnhart*, 400
 18 F.3d 676, 679 (9th Cir. 2005). Consequently, the issue before this Court is not whether the
 19 Commissioner could reasonably have reached a different conclusion, but whether the final decision
 20 is supported by substantial evidence.

21 It is incumbent on the Administrative Law Judge (“ALJ”) to make specific findings so that
 22 the Court does not speculate as to the basis of the findings when determining if the Commissioner’s
 23 decision is supported by substantial evidence. The ALJ’s findings should be as comprehensive
 24 and analytical as feasible and, where appropriate, should include a statement of subordinate factual
 25 foundations on which the ultimate factual conclusions are based, so that a reviewing court may
 26 know the basis for the decision. *See, e.g., Gonzalez v. Sullivan*, 914 F.2d 1197, 1200 (9th Cir.
 27 1990).

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1 B. Benefits Evaluation Process

2 The individual seeking disability benefits bears the initial burden of proving disability.

3 *Roberts v. Shalala*, 66 F.3d 179, 182 (9th Cir. 1995). To meet this burden, the individual must
4 demonstrate the “inability to engage in any substantial gainful activity by reason of any medically
5 determinable physical or mental impairment which can be expected...to last for a continuous period
6 of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A). More specifically, the individual must
7 provide “specific medical evidence” in support of his claim for disability. *See, e.g.*, 20 C.F.R. §
8 404.1514. If the individual establishes an inability to perform his prior work, then the burden
9 shifts to the Commissioner to show that the individual can perform other substantial gainful work
10 that exists in the national economy. *Reddick*, 157 F.3d at 721.

11 The ALJ follows a five-step sequential evaluation process in determining whether an
12 individual is disabled. *Bowen v. Yuckert*, 482 U.S. 137, 140 (1987) (citing 20 C.F.R. §§ 404.1520,
13 416.920). If at any step the ALJ determines that he can make a finding of disability or
14 nondisability, a determination will be made and no further evaluation is required. *See Barnhart v.*
15 *Thomas*, 540 U.S. 20, 24 (2003); *see also* 20 C.F.R. § 404.1520(a)(4). The first step requires the
16 ALJ to determine whether the individual is currently engaging in substantial gainful activity
17 (“SGA”). 20 C.F.R. § 404.1520(b). SGA is defined as work activity that is both substantial and
18 gainful; it involves doing significant physical or mental activities usually for pay or profit. 20
19 C.F.R. § 404.1572(a)-(b). If the individual is currently engaging in SGA, then a finding of not
20 disabled is made. If the individual is not engaging in SGA, then the analysis proceeds to the second
21 step.

22 The second step addresses whether the individual has a medically determinable impairment
23 that is severe or a combination of impairments that significantly limits him from performing basic
24 work activities. 20 C.F.R. § 404.1520(c). An impairment or combination of impairments is not
25 severe when medical and other evidence does not establish a significant limitation of an
26 individual's ability to work. *See* 20 C.F.R. §§ 404.1521, 404.1522. If the individual does not have
27 a severe medically determinable impairment or combination of impairments, then a finding of not
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1 disabled is made. If the individual has a severe medically determinable impairment or combination
2 of impairments, then the analysis proceeds to the third step.

3 The third step requires the ALJ to determine whether the individual's impairments or
4 combination of impairments meet or medically equal the criteria of an impairment listed in 20
5 C.F.R. Part 404, Subpart P, Appendix 1. 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526. If the
6 individual's impairment or combination of impairments meet or equal the criteria of a listing and
7 meet the duration requirement (20 C.F.R. § 404.1509), then a finding of disabled is made. 20
8 C.F.R. § 404.1520(d). If the individual's impairment or combination of impairments does not
9 meet or equal the criteria of a listing or meet the duration requirement, then the analysis proceeds
10 to the next step.

11 Before considering step four of the sequential evaluation process, the ALJ must first
12 determine the individual's residual functional capacity ("RFC"). 20 C.F.R. § 404.1520(e). The
13 residual functional capacity is a function-by-function assessment of the individual's ability to do
14 physical and mental work-related activities on a sustained basis despite limitations from
15 impairments. Social Security Rulings ("SSRs") 96-8p. In making this finding, the ALJ must
16 consider all of the symptoms, including pain, and the extent to which the symptoms can reasonably
17 be accepted as consistent with the objective medical evidence and other evidence. 20 C.F.R. §
18 404.1529. To the extent that statements about the intensity, persistence, or functionally-limiting
19 effects of pain or other symptoms are not substantiated by objective medical evidence, the ALJ
20 must evaluate the individual's statements based on a consideration of the entire case record. SSR
21 16-3p. The ALJ must also consider opinion evidence in accordance with the requirements of 20
22 C.F.R. § 404.1527.

23 The fourth step requires the ALJ to determine whether the individual has the residual
24 functional capacity to perform his past relevant work ("PRW"). 20 C.F.R. § 404.1520(f). PRW
25 means work performed either as the individual actually performed it or as it is generally performed
26 in the national economy within the last 15 years or 15 years prior to the date that disability must
27 be established. In addition, the work must have lasted long enough for the individual to learn the
28 job and performed at SGA. 20 C.F.R. §§ 404.1560(b), 404.1565. If the individual has the residual

1 functional capacity to perform his past work, then a finding of not disabled is made. If the
 2 individual is unable to perform any PRW or does not have any PRW, then the analysis proceeds
 3 to the fifth and last step.

4 The fifth and final step requires the ALJ to determine whether the individual is able to do
 5 any other work considering his residual functional capacity, age, education, and work experience.
 6 20 C.F.R. § 404.1520(g). If the individual is able to do other work, then a finding of not disabled
 7 is made. Although the individual generally continues to have the burden of proving disability at
 8 this step, a limited burden of going forward with the evidence shifts to the Commissioner. The
 9 Commissioner is responsible for providing evidence that demonstrates that other work exists in
 10 significant numbers in the national economy that the individual can do. *Lockwood v. Comm'r,*
 11 *Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010).

12 **II. BACKGROUND**

13 A. Procedural History

14 On October 21, 2022, Plaintiff filed an application for disability and disability insurance
 15 benefits with an alleged onset date of May 20, 2013. *See, e.g.*, Administrative Record (“A.R.”)
 16 207-208. Plaintiff’s application was denied initially and again on reconsideration. A.R. 114-122,
 17 125-133. Plaintiff filed a request for a hearing before an administrative law judge. A.R. 156-157.
 18 On February 29, 2024, Plaintiff and a vocational expert appeared for a hearing before ALJ Cynthia
 19 Hoover. *See* A.R. 48-81. On March 19, 2024, the ALJ issued an unfavorable decision finding that
 20 Plaintiff had not been under a disability through the date of decision. A.R. 24-42. The Appeals
 21 Council denied Plaintiff’s request for review. A.R. 1-6. On September 3, 2024, Plaintiff
 22 commenced suit seeking judicial review. Docket No. 1.

23 B. The Decision Below

24 The ALJ’s decision followed the five-step sequential evaluation process set forth in 20
 25 C.F.R. § 404.1520(a).² A.R. 26-42. At step one, the ALJ found that Plaintiff engaged in SGA
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27 ² The five-step process is largely the same for both Title II and Title XVI claims. For a
 28 Title II claim, however, a claimant must also meet insurance requirements. 20 C.F.R. § 404.130.
 The ALJ found that Plaintiff met the insured status requirement through March 31, 2026. A.R. 26.

1 from May 20, 2013, through January 1, 2017. A.R. 26-27. However, the ALJ found that there
 2 was a continuous 12-month period during which Plaintiff did not engage in SGA and, therefore,
 3 her findings address the period Plaintiff did not engage in SGA. A.R. 27. At step three, the ALJ
 4 found that Plaintiff had the following severe impairments: digestive disorder and trauma-and
 5 stressor-related disorder. A.R. 27-28. At step three, the ALJ found that Plaintiff did not have an
 6 impairment or combination of impairments that meets or medically equals the severity of one of
 7 the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1. A.R. 28-30. The ALJ found
 8 that Plaintiff has the RFC

9 to perform light work as defined in 20 CFR 404.1567(b) except [he]
 10 can understand, remember, and carry out simple tasks, with
 11 concentration, persistence and pace for such work; and only [have]
 occasional contact with others, such as coworkers, and the public, in
 brief, casual encounters.

12 A.R. 30-40. At step four, the ALJ found that Plaintiff is unable to perform any past relevant work.

13 A.R. 40-41. At step five, the ALJ found that there are jobs that exist in significant numbers in the
 14 national economy that Plaintiff can perform. A.R. 41-42. Based on all of these findings, the ALJ
 15 found Plaintiff not disabled from the alleged onset date through the date of her decision. A.R. 42.

16 III. ANALYSIS

17 Plaintiff submits that the ALJ's RFC is not supported by substantial evidence. Docket No.
 18 14 at 5.³ Specifically, Plaintiff submits that the ALJ failed to include the limitations of the state
 19 agency medical consultants, and instead, assessed limitations that were not identified by either
 20 consultant. *Id.* at 6. The Commissioner responds that substantial evidence supports the ALJ's
 21 assessment of the prior administrative medical findings. Docket No. 17 at 3.

22 “[R]esidual functional capacity is the most [Plaintiff] can still do despite [his] limitations.”
 23 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1). The RFC determination considers all medically
 24 determinable impairments, including those that are not severe. *Id.* at §§ 404.1545(a), 416.945(a).
 25 The RFC assessment must consider all evidence in the record and “contain a thorough discussion
 26 of the objective medical and other evidence.” *Laborin v. Berryhill*, 867 F.3d 1151, 1153 (9th Cir.
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28 ³ The Court's citations refer to the CM/ECF pagination.

1 2017) (citing Social Security Ruling 96-8p, 61 Fed. Reg 34474, 34478 (July 2, 1996)). “The RFC
 2 is an administrative assessment of the extent to which an individual’s medically determinable
 3 impairments...may affect his or her capacity to do work-related physical and mental activities.” *Id.*
 4 (quoting SSR 96-8p, 61 Fed. Reg at 34475). “[A]t the administrative law judge hearing level...the
 5 administrative law judge...is responsible for assessing [Plaintiff’s] residual functional capacity.”
 6 20 C.F.R. §§ 404.1546(c), 416.946(c). The residual functional capacity determination does not
 7 need to copy the exact opinion of any particular doctor, but “the ALJ is responsible for translating
 8 and incorporating clinical findings into a succinct” residual functional capacity. *Rounds v.*
 9 *Commissioner*, 795 F.3d 1177, 1185-86 (9th Cir. 2015), *as amended*, 807 F.3d 996, 1005-06 (9th
 10 Cir. 2015).

11 Plaintiff submits that the ALJ assessed limitations that were not identified by either of the
 12 state agency medical consultants. Docket No. 14 at 6. Plaintiff submits that the ALJ failed to
 13 include the limitation “brief, casual encounters with supervisors,” by instead determining that
 14 Plaintiff’s RFC is limited to “occasional contact with others, such as coworkers, and the public, in
 15 brief, casual encounters.” Docket No. 14 at 6. Plaintiff submits that adding the restriction of
 16 “occasional contact” is an error because it was not identified by either state agency medical
 17 consultant.⁴ *Id.* Plaintiff submits that “no where did they limit [Plaintiff] to occasional interaction
 18 with others such as coworkers and public – rather it was clear their limitation pertains to public,
 19 supervisors, and coworkers.” *Id.* The Commissioner responds that the ALJ did not omit the
 20 restriction to “brief, casual” encounters, but included it in addition to the restriction of “occasional
 21 contact with others.” Docket No. 17 at 3.

22 The ALJ summarized Dr. Araza’s and Dr. Olivares’ opinions and found them to be
 23 persuasive. A.R. 39. Specifically, the ALJ found that Araza’s and Olivares’ opinions that Plaintiff
 24 could interact appropriately in brief, casual encounters with the public, supervisors, and coworkers,
 25 *see* A.R. 120-121, 131-132, were persuasive because they were supported by the consultants’
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27 ⁴ Dr. Ribeiro’s assessment also limited Plaintiff to occasional interactions with coworkers
 28 and found that Plaintiff’s ability to interact appropriately with the general public was moderately
 limited. A.R. 95.

1 review of the record. A.R. 39. For example, the consultants reviewed medical records that showed
 2 that Plaintiff had presented as irritable and reported anger outbursts at work. A.R. 39; *see also*
 3 A.R. 117. Plaintiff was also combative and disruptive during a hospital stay. A.R. 706. However,
 4 on reconsideration, Plaintiff had an unremarkable mental status examination. A.R. 39; *see also*
 5 A.R. 128. While Plaintiff's attention and concentration were mediocre, he could complete most
 6 self-care, leisure activities, and household tasks independently. A.R. 532.

7 The Court finds that the ALJ's determination is supported by substantial evidence.
 8 Evidence exists in the record of Plaintiff's irritable mood, and angry, disruptive behavior. A.R.
 9 117, 706. As such, the ALJ determined that Plaintiff should not only be limited to brief encounters,
 10 but also to occasional encounters. A.R. 39. Even if the ALJ erred by including an additional
 11 limitation, any "overinclusion of debilitating factors is harmless." *Johnson v. Shalala*, 60 F. 3d
 12 1428, 1436 n.9 (9th Cir. 1995).

13 Plaintiff provides no relevant case law in support of his contention that an ALJ's
 14 determination must follow a medical opinion exactly. Instead, the regulations simply state that the
 15 ALJ must base the RFC on all the relevant evidence in the case record. 20 C.F.R. § 404.1545(a).
 16 Plaintiff submits that "it is questionable that an activity that [] can occur for up to one-third of the
 17 time...can also be characterized as "brief."" Docket No. 14 at 7. While there is a difference
 18 between "occasional" and "brief" in certain scenarios, in the instant matter, the ALJ included both
 19 in Plaintiff's RFC. A.R. 34; *see also* *Tonya T. v. Kijakazi*, No. 2:22-CV-1215-BNW, 2023 WL
 20 7404075, at *4 (D. Nev. Nov. 8, 2023) (finding that "occasional" is not consistent with "brief"
 21 when the ALJ's RFC accounts for "occasional" interaction and the medical doctors' opinion
 22 accounts for "brief" interaction). Plaintiff's cited inapplicable case law focuses on situations
 23 where an ALJ finds that the doctors' opinions that limit the claimant to brief contact are persuasive
 24 and consistent with the medical record, but then limits the claimants only to occasional contact in
 25 their RFC determination. *See* Docket No. 14 at 17; *cf. Bishton v. Kijakazi*, No. 2:20-CV-136-TLS,
 26 2021 WL 5564309, at *8 (N.D. Ind. Nov. 29, 2021). Yet, he fails to grapple with the reality that
 27 the ALJ provided both limitations in her RFC determination. *See* A.R. 30. Plaintiff also fails to
 28 explain how "brief, casual" encounters with "others, such as coworkers, and the public" is different

1 than “brief, casual encounters with supervisors.” Docket No. 14 at 6; *see also* A.R. 30. There is
 2 no indication that the use of coworkers and the public as examples in the ALJ’s RFC was meant
 3 to exclude supervisors.

4 Moreover, Plaintiff fails to show, that even if this determination is error, it is harmful. “To
 5 establish eligibility for Social Security disability benefits, a claimant has the burden to prove he is
 6 disabled.” *Valentine v. Comm’r of Soc. Sec. Admin.*, 574 F.3d 685, 689 (9th Cir. 2009). On appeal,
 7 the claimant bears the burden of establishing that the Commissioner erred. *Ludwig v. Astrue*, 681
 8 F.3d 1047, 681 F.3d 1047, 1054 (9th Cir. 2012). In addition, “the burden of showing that an error
 9 is harmful normally falls upon the party attacking the agency’s determination.” *Shinseki v.*
 10 *Sanders*, 556 U.S. 396, 409 (2009). “[B]ald assertions” supported by “little if any analysis” do not
 11 assist the reviewing Court in evaluating the issues on appeal. *See Independent Towers of Wash. v.*
 12 *Wash.*, 350 F.3d 925, 929 (9th Cir. 2003).⁵ Such undeveloped arguments are deemed waived. *See*
 13 *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008); *see also, e.g.*,
 14 *Hilao v. Estate of Marcos*, 103 F.3d 767, 778 n.4 (9th Cir. 1996).

15 Plaintiff has not provided meaningful argument as to how the ALJ’s alleged error is
 16 harmful, or even how the ALJ’s finding was unsupported by substantial evidence. *See* Docket No.
 17 14. “[T]he key question is not whether there is substantial evidence that could support a finding
 18 of disability, but whether there is substantial evidence to support the Commissioner’s actual
 19 finding that claimant is not disabled.” *Jamerson v. Chater*, 112 F.3d 1064, 1067 (9th Cir. 1997);
 20 *see also, e.g.*, *Ahearn v. Saul*, 988 F.3d 1111, 1115-16 (9th Cir. 2021) (“We may not reweigh the
 21 evidence or substitute our judgment for that of the ALJ. The ALJ is responsible for determining

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 23 ⁵ As explained by the Ninth Circuit:

24 The art of advocacy is not one of mystery. Our adversarial system
 25 relies on the advocates to inform the discussion and raise the issues
 26 to the court. Particularly on appeal, we have held firm against
 27 considering arguments that are not briefed. But the term “brief” in
 28 the appellate context does not mean opaque nor is it an exercise in
 the substance of their argument in order to do so.

1 credibility, resolving conflicts in medical testimony, and for resolving ambiguities. When the
2 evidence can rationally be interpreted in more than one way, the court must uphold the [ALJ's]
3 decision" (citations and internal quotations omitted)). Plaintiff has failed to demonstrate that the
4 ALJ erred.

5 **IV. CONCLUSION**

6 For the reasons discussed above, the Court **DENIES** Plaintiff's motion to reverse and
7 remand. Docket No. 14. The decision below is **AFFIRMED**. The Clerk's Office is
8 **INSTRUCTED** to **ENTER FINAL JUDGMENT** accordingly and to **CLOSE** this case.

9 Dated: July 8, 2025

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11 Nancy J. Koppe
United States Magistrate Judge

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